

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

ASSATA ACEY,

Plaintiff

v.

INDUCTEV,

Defendant.

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CIVIL ACTION

No. 2:23-01438-PD

Sur-reply re: Doc 131

I, plaintiff, submit the following sur-reply to defend plaintiff's choice in responding *only* to the defendant's statement of facts (doc 131-3). Plaintiff reiterates her opposition of the defendant's motion, and the argument it stands on. By way of elaboration, the plaintiff submits the following facts and statements to support that the defendant's arguments are immaterial (to the plaintiff's ability to prove her case), lacking in factual foundation, or both.

General Background and Argument

Defendant's doc 131-3 states 132 facts, and I admitted to 93 of them. However, those disputed facts forfeited by defendant's Doc 64 (See Doc 149) and/or properly denied in my response (doc 141) are critical to the defendant's arguments for summary judgement. *This is even before considering those facts in plaintiff's doc 92, that the defendant has failed to properly dispute. FRCP 56(e).*

At *least* 8 of the defendant's asserted undisputed facts (SUMF) *relate* back to their

assertions of insufficient knowledge (Doc 149) and rely *solely* on materials received prior to March 18, 2024. The Defendant's use of these "SUMF" are therefore **precluded by the record**:

- SUMF 6: insofar as SUMF 6's reliance on Doc 131-7 (Defendant's Ex. 3) is properly disputed, these statements are related to Doc 64 ¶¶ 71-72, 84, 86(a)-86(d), 263(h)-263(j), and rely on emails (Defendant's Ex. 13) exchanged between myself and the Defendant's counsel on 09/23/2022.
- SUMF 8 and 17 are related to Doc 64 ¶¶ 71-72, 84, 86(a)-86(d), 263(h)-263(j), and rely on emails (Defendant's Ex. 13) exchanged between myself and the Defendant's counsel on 09/23/2022.
- SUMF 31-32 and 68 are related to Doc 64 ¶¶ 34, 140-142, and rely on ECF 20-17 (Defendant's Ex. 15) which was filed 06/16/2023.
- SUMF 90 is related to Doc 64 ¶ 13, and relies on my complaint filed in state court on 03/14/2023.
- SUMF 107 and 112 are related to Doc 64 ¶ II(3), and rely on Interview Evaluation Forms (Defendant's Ex. 11) that have been in defendant's possession since 04/2021.

Furthermore, thirty-nine of the Defendant's "SUMF" were denied *with citations* in Plaintiff's Doc 141:

Doc 141 ¶¶ 6, 8-10, 17, 25, 28, 31-32, 38¹, 47, 50-51, 59-60², 64-65, 68, 75,

¹ Doc 141 denied SUMF 38, and provided sufficient citations for that denial in the denials of SUMF 51 and

80-81, 88, 90, 94, 96, 98, 105-107, 112, 114-117, 121, 125, 127, 129, 131. To explicate, the introduction of Defendant's memorandum begins on p. 7 of doc 131-2; the conclusion is provided on page 31. This leaves 24 pages of argument, 17 (70%) of which is constructed around facts with no evidentiary basis (see plaintiffs denial citation on Doc 141). The lack of supporting evidence leaves more than two thirds of the defendant's argument unsubstantiated. This number becomes even more significant when one considers how the sections of Doc 131-2 build upon on another. As a result, the defendant's argument as a whole is deeply hindered by a lack of supporting evidence.

In *further* detail, sections A(1)-A(3), B(1) and C of Defendant's memorandum rely almost totally on these disputed facts.

Further still, sections A and B of Doc 131-2 also present immaterial arguments of: a) whether a disqualifying a *subset* of plaintiff's evidence is sufficient to disqualify *all* plaintiff's filed evidence for a hostile environment; b) plaintiff's qualification for *senior technician* role can supersede plaintiff's claims that she was intentionally denied the classification of *engineer* despite job tasks.

For these reasons, any substantiated remainder of the Defendants argument is yet immaterial; as shown by her response (Doc 141), pretrial memorandum (Doc 142) or her brief in support off Doc 15 (Doc 20 which the Defendant's motion fully ignores), the plaintiff still possesses the evidence necessary to prove her claims

² The citation for Plaintiffs denial of SUMF 60 is provided at ¶ 60 of Doc 141

elements, *regardless of any undisputed facts between the parties*.

The affected sections of the Defendant's memorandum are listed below with pages relying on properly denied “SUMF”:

Sections A(1)-A(3) (pp. 11-17)

- p. 11 last sentence-p.12 2nd sentence uses plaintiff statements about Ryan Taggart and *Seth Wolgemuth* to substantiate Plaintiff’s “alleged” response to reviews submitted by *Bruce Mitchell* and Ryan Taggart. See admitted SUMF 102.
- p. 12 last sentence-p.13 1st sentence is irrelevant because the defendant chose to hire me for a role with identical requirements and description.
- p. 13 part 2, 1st paragraph relies completely on denied, unsubstantiated SUMF 98.
- p. 14 last paragraph describes witness testimony to establish witness knowledge—while ignoring prior witness statements. See Doc 141 ¶¶ 59-60.
- p.15 1st paragraph, 2nd sentence relies completely on denied, unsubstantiated SUMF 38 and 60 (See Doc 141 ¶ 60).
- p. 15 last paragraph, 1st sentence relies completely on denied, unsubstantiated SUMF 98. (see Doc 141 ¶ 98).
- p. 16 2nd – to-last sentence relies completely on denied, unsubstantiated *and*

forfeited SUMF 68. (See Doc 141 ¶ 68).

Section B(1) (pp. 19-27)

- p. 19 2nd (middle) paragraph relies completely on denied, unsubstantiated SUMF 106. See Doc 141 ¶ 106.
- p. 20 1st paragraph relies heavily on denied, unsubstantiated SUMF 114-115 -- and cannot stand on SUMF 113 *alone*. See Doc 141 ¶¶ 114-115.
- p. 21 last paragraph-p. 22 1st paragraph relies heavily on denied, unsubstantiated SUMF 121-- and cannot stand on SUMF 122-124 *alone*. See Doc 141 ¶ 121.
- p. 22 last paragraph relies completely on denied, unsubstantiated SUMF 129. See Doc 141 ¶ 129.
- p. 23 1st paragraph falsely conflates lack of *facial* evidence of discrimination/hostility/offensive behavior with a lack of *circumstantial* evidence of discrimination/hostility/offensive behavior -- and is *ineffective* due to Doc 141 ¶¶ 31-32, 50-51, 81, 88, 90, 96, 98, 112, 114, 116-117, 121, 127, 129.
- p. 23 last paragraph-p. 24 1st paragraph relies heavily on denied, unsubstantiated SUMF 94 and 98--- and is *ineffective* due to Doc 141 ¶¶ 94, 98.
- p. 24 3rd --to-last sentence relies completely on denied, unsubstantiated SUMF 125. See Doc 141 ¶ 125.

- p. 25 2nd paragraph relies heavily on denied, unsubstantiated SUMF 127-- and cannot stand on SUMF 132 *alone*. See Doc 141 ¶ 127.
- p. 25 last paragraph-p. 26 1st paragraph relies heavily on denied, unsubstantiated *and forfeited* SUMF 112---and is *ineffective* due to Doc 141 ¶ 112.
- p. 26 2nd paragraph 1st sentence relies completely on denied, unsubstantiated SUMF 98.
- p. 26 last sentence- p. 27 1st sentence relies completely on denied, unsubstantiated SUMF 106. See Doc 141 ¶ 106.

Section C (pp. 27-29)

- p. 27 (part C, 1st sentence) relies completely on denied, unsubstantiated SUMF 6. See Doc 141 ¶ 6.
- p. 27 last paragraph-p. 28 1st sentence relies completely on denied, unsubstantiated half of SUMF 9.³ See Doc 141 ¶ 9.
- p. 28, 2nd paragraph, 2nd --to-last sentence relies completely on denied, unsubstantiated and *forfeited* SUMF 17. See Doc 141 ¶ 17.
- p. 29 footnote end relies completely on denied, unsubstantiated SUMF 131. See Doc 141 ¶ 131.

Sections D and E rely heavily on Sections C, B and A, in that order, causing

³ Insofar as the first half of SUMF 9 relies who¶ly on Defendants Ex. 13, it is also forfeited by the Defendant's Doc 64

these *also* to be unsubstantiated.

Sincerely,

Assata Acey Hackman /s/

Assata Hackman (Pro Se)

5121 Brown St,

Philadelphia, PA, 19139

770-231-1017

aceyassata@gmail.com

Date: 09/29/2024